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No. 94-1027

In The

Supreme Court of the United States

October Term, 1994

DANIEL ANDERSON, JR., *et al.*,

Petitioners,

v.

DOUGLAS & LOMASON CO., INC., *et al.*,

Respondent.

On Petition For Writ of Certiorari To The United States Court of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

George K. McPherson, Jr.
Robert N. Godfrey
(Counsel of Record)

SMITH, CURRIE & HANCOCK
2600 Harris-Tower, Peachtree Center
233 Peachtree Street, N.E.
Atlanta, Georgia 30303-1530
(404) 521-3800

Attorneys for Respondent

QUESTIONS PRESENTED

1. Did the Court of Appeals correctly apply the "clearly erroneous standard" in its review of the district court's decision?

2. Did the lower courts correctly apply the standards of *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), in determining that a pattern and practice case such as this should proceed under a disparate treatment theory?

3. Is it appropriate for the lower courts to consider and favor a statistical analysis which accurately reflects the dynamics of the Company's hiring; and is it appropriate for the lower courts, and especially the trial court to rely on reasonable inferences from the record evidence?

RULE 29.1 LISTING

Douglas & Lomason Company has no parent or subsidiary companies. It is engaged with the Japanese company Namba Press in a joint venture known as Bloomington-Normal Seating Company, Normal, Illinois.

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For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT:

The Respondent, Douglas & Lomason Co., Inc., respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Eleventh Circuit's opinion in this case. That opinion is reported at 26 F.3d 1277 (5th Cir. 1994).

STATUTORY PROVISIONS

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

STATEMENT OF THE CASE

The course of this litigation now has covered nearly ten (10) years. The original complaint was filed on July 5, 1985. Class certification hearings were held in July and September 1986. Plaintiffs' Motion for a Preliminary Injunction was heard and denied in October 1986 and a modified motion similarly was denied in January 1987 and again by supplemental order in March 1987. The trial court's denial of a preliminary injunction was affirmed by the Fifth Circuit in August 1988. *Anderson v. Douglas & Lomason Company*, 835 F.2d 128 (5th Cir. 1988).

A subsequent lawsuit entitled *Bishop, et al. v. Douglas & Lomason Company*, Case No. DC-87-85-5-0, was filed on behalf of non-applicants and was later merged into *Anderson*.

A subsequent Motion for Preliminary Injunction on matters unrelated to the original motion was heard and granted in part in April 1987.

The trial of the case to the Honorable L. T. Senter, Chief Judge, commenced on June 5, 1989, and concluded on June 28 1989 without interruption. Judgment was entered in favor of defendant on July 21, 1992. All proceedings prior to judgment had been presided over by Judge Senter.

In the course of discovery over nearly a four-year period, the parties took some 200 depositions of anecdotal fact witnesses, as well as those of expert witnesses. The defendant Company produced all applications and related personnel documents of thousands of employees. Plaintiffs and their experts were permitted access to the Company's production facility for purposes of inspection.

The Original Complaint and its amendments in *Anderson* launched a classic broad-based pattern and practice attack on the employment practices of the Company. The claims included straightforward hiring, failure to provide applications, racial harassment, hazardous job assignments, promotions, discriminatory bathroom breaks, discriminatory allocation of sit-down jobs, assignments to temporary jobs and retaliatory discharge. Appendix 165a. These claims were tied directly to alleged animus under the tenure of Plant Manager James Grizzard, such that the time period under scrutiny is referred to throughout this case as "the Grizzard years."

Judge Senter is the only individual who was involved in every aspect of this litigation from the filing of the Complaint through issuance of his decision. Not only did he preside at trial as the trier-of-fact, he also presided at hearings on class certification and motions for preliminary injunction. In so doing, he was able to hear, observe and evaluate the testimony of witnesses, especially expert witnesses, as the case developed in pre-trial hearings as well as at trial.

Moreover, his experience in race discrimination litigation in the Northern District of Mississippi is legion. For years he has presided over litigation involving major employers in the State of Mississippi and the Mississippi State Employment Security Commission. *See e.g., Pegues v. MSES,* 899 F.2d 1449 (5th Cir. 1990); and in many of these cases the plaintiffs and plaintiff classes have been represented by the same plaintiffs' counsel involved in this litigation.

In evaluating all the evidence, Judge Senter had available to him the historical statistical context of an employer with a workforce with a minority population exceeding 70% in a community where the civilian labor force was 51.9%. At the same time, the Company demonstrated that in the critical area of separations, where racial animus should be readily apparent, "the number of black employees who left the company was significantly lower than would have been predicted under a neutral analysis, *and indeed significantly less than would have*

been predicted in a racially-discriminatory environment such as is alleged by the plaintiffs." Appendix 176a.

With this historical perspective, and with the opportunity to hear first-hand and to analyze and weigh the anecdotal evidence, Judge Senter reviewed the competing statistical presentations and concluded that the defendant's was more credible. He reviewed each of the seven standards of availability proffered by plaintiffs and rejected them. Among the reasons for this rejection was that each of the plaintiff's standards was based upon an external "stock" figure or some other percentage which was not reasonably comparable with the Company's hiring practices during "the Grizzard years." Appendix 176a-181a.

He credited the defendant's statistical analysis which was based upon actual applicant flow and which accounted for the dynamics of the actual hiring practices of the company. Appendix 174a-175a. His crediting of the defendant's analysis is supported by his factual findings of what the Company's hiring practices were during the period under scrutiny. Appendix 167a-174a.

In its decision, the Fifth Circuit affirmed the trial court's decision, and it is clear that it engaged in a critical review of the record under Rule 52. That it correctly applied the "clearly erroneous" standard in its review is patent.

SUMMARY OF THE ARGUMENT

I. The Fifth Circuit correctly applied the "clearly erroneous" standard mandated by Rule 52(a) in a manner consistent with the dictates of this Court in *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985), *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948), *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271 (1979), *Bazemore v. Friday*, 478 U.S. 385 (1986), and *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975). As the trier-of-fact, the trial judge was uniquely capable of evaluating the evidence and his findings are fully supported in the record.

II. The lower courts correctly applied the standards of *Wards Cove Packing v. Atonio*, 490 U.S. 642 (1989). The plaintiffs in this case launched a broad-based pattern and practice disparate treatment attack upon the employer and failed to isolate a specific employment practice from this shotgun attack.

III. The lower court's analysis of the defendant's statistical evidence and acceptance of the hiring pools is not in conflict with the decisions of this court or of other circuits. That analysis was a true reflection of the dynamics of the Company's hiring practices and the disaggregated data was also analyzed on an aggregated basis.

Nor was it error for the lower courts to draw reasonable inferences from the record evidence in its evaluation of anomalies in the statistical presentations. Even beyond this, however, no dispositive findings or conclusions relied upon such inferences.

REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS CORRECTLY APPLIED THE "CLEARLY ERRONEOUS" STANDARD

The Petitioners have claimed that the Court of Appeals failed to consider the entire record in its review of the decision of the District Court. This clearly is not the case. The Fifth Circuit's application of the clearly erroneous standard was fully consistent with the dictates of the Supreme Court.

What the Petitioners seek here is no different from what they sought below--to have a *de novo* review of all the evidence, thus usurping the judicial function of the trial court. As noted in *Anderson v. City of Bessemer City*, 470 U.S. 564, 473-474 (1985):

> The reviewing court oversteps the bounds of its duty under Rule 52(a) if it undertakes to duplicate the role of the lower court. 'In applying the clearly erroneous standard to the findings of the district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues de novo.' *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969).

In a further explanation of the rationale of deference to the trial court and availability of a trial *de novo* at the appellate level, this Court went on to note in *Anderson*,

> The rationale for deference to the original finder of fact is not limited to the superiority of the trial judge's position to make determinations of credibility. The trial judge's major role is the determination of fact, and with experience in fulfilling that role comes expertise. Duplication of the trial judge's efforts in the Court of Appeals very likely contrib-

> utes only negligibly to the accuracy of the fact determination at a huge cost in diversion of judicial resources. In addition, parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one; requiring them to persuade three more judges at the appellate level is requiring too much. As the Court has stated in a different context, the trial on the merits should be the "the 'main event' ... rather than a 'tryout on the road'". (Citation omitted.)

470 U.S. at 574-575.

The cases cited by Petitioners are not of a contrary view, although cited by Petitioners as such. Thus, while stating the governing principle that the entire record is to be reviewed, this Court in *United States v. United States Gypsum Co.*, 333 U.S. 364, 395-396 (1948), merely held that upon the special circumstances of that case, credibility resolutions by the trial court were not controlling because of the obvious conflict between the testimony of the witnesses and documentary evidence of record.

As noted above, although Petitioners cite *Anderson v. City of Bessemer City*, *supra*, as being in accord with this general principle stated in *United States Gypsum*, the full flavor of the Bessemer City case is more of a caution against overzealous appellate review which may amount to a trial *de novo*. Unfortunately, in the ardor of presenting their case, the Petitioners have chosen to ignore later clarifying pronouncements of this Court, in favor of "sound bites" taken out of context and clothed as the "holding" of this Court.

Likewise, the "holding" cited by Petitioners in *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982), was but a further caution to appellate courts not to stray from the constraints of Rule 52 by considering some facts "ultimate facts" which

thereby are independently reviewable. Stated otherwise, for purposes of Rule 52, the trial court's finding of the "fact" of discriminatory intent is not independently reviewable but subject to Rule 52. *See e.g.*, footnote 16 at 456 U.S. 286.

The principle enunciated in *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 274-75 (1979), is merely that "Rule 52(a) applies to expert testimony," as stated by Petitioners is not dispositive. The appropriate citation to *Graver Tank* would include the following:

> Rule 52(a) of the Federal Rules of Civil Procedure provides in part: 'Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.' To no type of case is *this last clause* more appropriately applicable than to the one before us, where the evidence is largely the testimony of experts as to which a trial court may be enlightened by scientific demonstrations. (Emphasis supplied.)

336 U.S. at 274. The "last clause" to which the Court refers is that of the high degree of deference accorded a trial court's credibility resolutions. Thus, according the Court, where expert testimony is involved the degree of deference accorded the trial court is at its highest.

Petitioners' citation to *Bazemore v. Friday*, 478 U.S. 385, 397-98 (1986), for the proposition that the unanimous holding was that the district court had erred in not accepting expert statistical evidence is inaccurate. Although the Court considered this question at length, the holding was as follows:

> Although we think that consideration of the evidence makes a strong case for finding the District Court's conclusion clearly erroneous, we leave that task to the Court of Appeals on

> remand which must make such a determination based on the 'entire evidence' in the record.

478 U.S. at 403-404. What was at issue in that case is whether the Plaintiffs' statistical analyses could be rejected outright as unacceptable evidence of discrimination simply because the analyses did not consider all variables. The conclusion of this Court was simply that any such defect goes to probative value and not to admissibility, with its probative value depending upon "all the evidence presented by both the plaintiff and the defendant." 478 U.S. 400.

Albemarle Paper Co. v. Moody, 422 U.S. 405, 426-36 (1975), did not involve "an intense review of conflicting expert testimony," but instead, a review of a limited validation study by an industrial psychologist. The Court in *Albemarle Paper* questioned the probative value of a one-half day validation study, applying the EEOC Guidelines on testing as a standard of comparison.

What all these cases tell us is that the courts of appeal have a duty to review district court decisions based on all the evidence; however, such appellate review under the clearly erroneous standard does not rise to the level of *de novo* review. Moreover, in the allocation of judicial resources, Rule 52 compels deference to the trial court in its findings based in whole or in part on the credibility of witnesses.

In the case at bar, the trial judge presided over weeks of trial, which had been preceded by years of pre-trial discovery, hearings on class certification and preliminary injunctive relief, and an interlocutory appeal. Obviously, given the length of the proceedings below and the volume of the record, there is but one individual who has been in a position to evaluate all the evidence first-hand. Judge Senter did so in this case, and his decision, consisting of 140 pages, deals in great detail with all the evidence before him and his reasons for accepting or rejecting that evidence.

In its review of the district court's decision, it is obvious that the Court of Appeals necessarily had to review the entire record and that it did so. It concluded that it was not necessary to review the district court's decision not to accept the plaintiffs' external availability measures because it agreed with the district court's determination that applicant flow was the preferred measure of availability. Appendix 15a, n.14. To then have gone ahead to review that evidence would have been an exercise in futility. Beyond this decision to forego a detailed and *de novo* analysis of the record, there is no indication that any other part of the record was not considered.

II. THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN WARDS COVE PACKING CO. V. ATONIO AND THERE IS NO CONFLICT AMONG THE CIRCUITS ON THE BURDEN TO IDENTIFY THE SPECIFIC EMPLOYMENT PRACTICE CAUSING THE ALLEGED DISPARATE IMPACT.

In *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 656-658 (1989), this Court addressed the issue in a disparate impact case of the plaintiff's burden to identify and to isolate a specific employment practice as the cause of the alleged disparity. Beginning with the earlier decision in *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977 at 994 (1988), the Court first addressed the question of causation:

> [W]e note that the plaintiff's burden in establishing a prima facie case goes beyond the need to show that there are statistical disparities in the employer's work force. The plaintiff must begin by identifying the specific employment practice that is challenged ... Especially in cases where an employer combines subjective criteria with the use of more rigid standardized rules or tests, the plaintiff is in our view responsible for isolating and identifying the specific employment practices

> that are allegedly responsible for any observed statistical disparities.

Building upon this premise, in *Wards Cove* the Court required of plaintiffs in future cases the burden to "demonstrate that it is *the application of a specific or particular employment practice that has created the disparate impact under attack*." 490 U.S. 657. The reasoning behind this requirement was the equalizing of the use of bottom-line statistical evidence.

> Just as an employer cannot avoid liability under Title VII by demonstrating that, 'at the bottom line,' his work force is racially balanced (where particular hiring practices may operate to deprive minorities of employment opportunities), *see Connecticut v. Teal*, 454 U.S. 813, a Title VII plaintiff does not make out a case of disparate impact simply by showing that, "at the bottom line," there is a racial *imbalance* in the work force. (Emphasis original.)

490 U.S. 656-657.

The decisions of both lower courts in the instant case are entirely consistent with the dictates of *Watson* and *Wards Cove*, and contrary to the representation of Petitioners, there was no attribution or acknowledgment by either the district or appellate court that any "specific or particular employment practice ... created the disparate impact under attack." The claim by Petitioners that a difference in the percentage of black hires was attributed "to the company's decision not to provide application forms to persons seeking to apply at times when the company is hiring," (Petition, p. 21) is either a fabrication or a gross misreading of those decisions.

The Court of Appeals outlined the various changes in the company's hiring practices which were being challenged by the Plaintiffs, which included:

- not allowing employees to take applications home for friends and/or relatives
- requiring all applicants to appear personally at the plant to complete applications
- accepting applications only when the company was hiring
- accepting a limited number of applications for available openings
- accepting appointments to complete applications from telephone callers

Appendix 2a-4a. After noting all of these changed practices, the Court of Appeals' conclusion was not that propounded by Petitioners, but instead:

> Thus, it was possible for individuals to be told that D&L was not taking applications both when the Company was *and was not* hiring. (Emphasis supplied.)

Appendix 4a. In endorsing the district court's application of *Wards Cove*, the Court of Appeals concluded that the plaintiffs had not pointed to a specific policy other than "D&L's policy requiring individuals to fill out applications at the plant," and had failed to establish a causal connection between that policy and the alleged disparity. Appendix 9a. After a careful review of the record, and of the findings of the district court, the Court of Appeals determined that "the record contains no evidence indicating that D&L's application procedures affected potential black applicants any differently than potential white applicants." Appendix 12a. It is this ultimate finding which belies the baseless representation of the Petitioners.

What the Petitioners fail to recognize is that at no point has there been an evidentiary showing that after the changes in Company policy that blacks had a disparate opportunity to avail themselves of access to job openings. All the anecdotal

evidence was to the contrary. The courts below so found, and the record fully supports their conclusions.

Petitioners' contention that the Fifth Circuit's decision is in conflict with the Third Circuit's in *Green v. USX Corp.*, 896 F.2d 801 (3rd Cir.), *cert. denied*, 498 U.S. 814 (1990), is similarly baseless. In *Green*, the plaintiffs were able to show a disparate impact through applicant flow data *and* were able to isolate the interview process as the cause of that disparity. In the instant case, not only was there no specific policy or practice isolated, the applicant flow data established no significant statistical disparity in the hiring of blacks. Thus, although the outcome of *Green* and this case is different, each outcome was the result of the *same application* of the *Wards Cove* standard to a *different set of facts*. Such "differences" are not "conflicts" warranting review by this Court.

III. THERE IS NO SPLIT AMONG THE CIRCUITS NOR A CONFLICT WITH THIS COURT'S OPINIONS ON THE PROPER EVALUATION OF STATISTICAL EVIDENCE OR THE TRIER-OF-FACT'S RESORT TO INFERENCES FROM THE RECORD EVIDENCE.

The Respondent is in agreement with the Petitioners that this Court has charted a path for the lower courts in the proper use of statistical evidence in Title VII cases. However, Respondent strenuously disagrees with Petitioners' baseless assertions that the lower courts in this case improperly evaluated the statistical evidence. Respondent also challenges the assertion that the lower court's reliance upon inferences from the record evidence is improper.

The Petitioners' argument here is nothing more than a reiteration of their argument, rejected below, that the statistical methodology employed by the defense expert should have been rejected because it relied on samples smaller than the universe of all applicants over a two-and-a-half year period. The Court of Appeals addressed this question.

> The plaintiffs next argue that even if applicant flow analysis was the best standard by which to measure the labor pool available to D&L, the district court erred in accepting Dr. Haworth's analysis because it was based on samples too small to allow for a meaningful statistical analysis. When statistics are based on small sample sizes, the plaintiffs contend, the presence or absence of statistical significance is not a reliable indicator of discrimination. Whether or not a sample is too small to yield statistically meaningful results, however, must be determined on a case-by-case basis. *Watson*, 487 U.S. at 995, n.3, 108 S. Ct. at 2789, n.3; *Rendon v. AT&T Technologies*, 883 F.2d 388, 397 (5th Cir. 1989). The district court found Dr. Haworth's analysis to be more credible and more persuasive than the seven analyses offered by the plaintiffs' expert. We find that the district court did not err in crediting D&L's statistical analysis, which demonstrated that D&L did not engage in discriminatory hiring practices, over the analyses offered by the plaintiffs.

Appendix 19a (Vacated language omitted). It is this finding which is challenged here. Yet in making its assertions, the Petitioners conveniently omit footnote 18 which is appended to this finding:

> Assuming *arguendo*, that the pools were too small to permit meaningful statistical analysis, Dr. Haworth also analyzed the pools on an aggregate basis and found no statistically significant deviation when pool 5 was omitted. *See* note 15, *supra*. Thus, this analysis, which the district court also credited, was not based on a sample

> significantly smaller than that utilized by the plaintiffs' expert. Therefore, the district court did not clearly err in refusing to find that D&L possessed discriminatory intent with regard to its hiring practices.

Id.

Thus the Court of Appeals and the district court had available both the "pool" analysis of smaller samples and the aggregate analysis to support their findings. Even so, had the decisions below been based only upon the non-aggregated analysis, there would be no basis for a finding here of conflict with prior decisions of this Court or conflict with decisions of other circuits.

The decisions of this Court cited by Petitioners do not dictate a contrary result. Yes, they chart a path for the lower courts to follow; however, they recognize that each case will be unique.

> We caution only that statistics are not irrefutable; they come in infinite variety and, like any other kind of evidence, they may be rebutted. In short, *their usefulness depends on all the surrounding facts and circumstances.* (Citation omitted.) (Emphasis supplied.)

Teamsters v. United States, 431 U.S. 324.

The peculiar facts and circumstances presented in this case included the fact that the Company's hiring pattern over the extended period in question was dynamic in terms of there being significant periods of inactivity in between extremely active periods; hiring dates reflected a proximity to recent application dates; applications which were accepted were taken only at the specific times that job openings were available; applications were taken specifically for the positions then available; and, the number of applications taken each time was limited by the specific number of positions *then available*. To analyze such a dynamic process as the Petitioners would have

it done would be to ignore the reality of the process. For example, under the Petitioners' rationale, a proper statistical analysis would be to include an applicant for employment in the latter part of 1984 along with an applicant in 1982 for a position available in 1982 when clearly the 1984 applicant was not in the "pool" of applicants in 1982. The Company's analysis corrected for this inaccuracy by comparing only those applicants available for specific openings during discernible time frames. That the courts found this to be a reasonable analysis is not in conflict with the Court's directives.

Nor is the decision below in conflict with those of other circuits. *Lilly v. Harris-Teeter Supermarket*, 720 F.2d 326, 336, n.17 (4th Cir. 1983), stands only for the proposition that in analyzing *involuntary termination decisions*, it is preferable to view such information in combined form rather than year by year. In *Eldredge v. Carpenters 46 Northern California Counties Joint Apprenticeship and Training Committee*, 833 F.2d 1334, 1339, n.7 (9th Cir. 1987), *cert. denied*, 487 U.S. 1210 (1988), the plaintiff presented year-by-year and aggregate statistical analyses, each of which demonstrated disparity. The Ninth Circuit merely agrees with the plaintiff that the aggregated data alone is sufficient. The *Eldredge* court did note, however, that *"if a year-by-year analysis demonstrated an ever-decreasing discriminatory impact, such a result should not be ignored."* (Emphasis supplied.) *Id.*

EEOC v. American National Bank, 652 F.2d 1176, 1993, n.12, 1194 (4th Cir. 1981) is a primer on the dilemma faced by lower courts in discerning the weight and validity of statistical evidence in general, and sample size in particular. What the Fourth Circuit was faced with was allowing smaller *employers* to use as a defense that there were too few employment decisions made to sustain statistical analysis. In addressing this dilemma, the court in *American National Bank* noted:

> But, aside from the Supreme Court's general observation in *Mayor of Philadelphia* that on the very special facts there presented "the

> District Court's concern for the smallness of the sample presented by the 13-member Panel was also well founded, *id.* at 621, *we have no guidance as to how small is too small other than our own best judgment.*

652 F.2d at 1193-1194 (emphasis supplied).

Finally, in *Ezell v. Mobile Housing Board*, 709 F.2d 1376, 1382 (11th Cir. 1983), the only thing the Eleventh Circuit said was that it was improper for the district court to ignore aggregate data and it remanded on that basis. The remand was not with direction that this aggregate data was controlling:

> Therefore, we remand this case to the district court to reconsider its finding of lack of discriminatory intent in light of the aforementioned evidence, *or else articulate reasons why it will not consider such evidence.*

Id. at 1382 (emphasis supplied).

Petitioners also raise the specter of impermissible speculation by the lower courts, citing for this proposition *Mayor of Philadelphia v. Educational Equality League*, 415 U.S. 605, 621 (1974). The admonition in that case was that the *appellate court* reviewing the record should not engage in speculation based upon a cold record. The *caveat* of the Court in *Mayor of Philadelphia* is found in footnote 20, here cited in its entirety:

> We share the view expressed in the dissent that facts in a case like the instant one, 'when seen through the eyes of judges familiar with the context in which they occurred, may have special significance that is lost on those with only the printed page before them.' *Post*, at 644. That is one reason we believe that the Court of Appeals, 'with only the printed page before [it] ...,' erred in reversing the District court. The judge most 'familiar with the context in which [the facts] occurred ...' was

> obviously the District Judge, since he heard and viewed the testimony and other evidence presented. Nothing in our opinion should be seen as detracting from the salutary principle that great weight should be accorded findings of fact made by district courts in cases turning on peculiarly local conditions and circumstances. *E.g., White v. Regester*, 412 U.S. 755, 769-770 (1973).

Id. at 621, fn.20.

In the case at bar, the Court of Appeals accepted the district court's firsthand view of the evidence, which was fully supportive of its inference from that evidence. Moreover, there is no evidence in either of the decisions below that the trial court or the reviewing court made dispositive rulings from these inferences. Rather than the *sine qua non*, at most, the inferences were noted as an additional basis for findings or conclusions.

CONCLUSION

There is nothing in the record of this case or in the review of similar cases of the courts of appeal which even remotely suggests a basis for review by this Court. The Petition for Writ of Certiorari should be denied.

GEORGE K. MCPHERSON, JR.
ROBERT N. GODFREY
(Counsel of Record)

SMITH, CURRIE & HANCOCK
2600 Harris-Tower, Peachtree Center
233 Peachtree Street, N.E.
Atlanta, Georgia 30303-1530
(404) 521-3800
Attorneys for Respondent